UKLFI warns ICC Prosecutor that he is breaching professional rules

AUGUST 29, 2024 / / GAZA, INTERNATIONAL, ISRAEL

The Prosecutor of the International Criminal Court (ICC) has been warned that he is breaching the Court's rules and the Code of Conduct of the English Bar in his applications for the arrest of Benjamin Netanyahu and Yoav Gallant.

UK Lawyers for Israel (UKLFI) has written to the Prosecutor, Karim Khan KC, warning him that he is breaching these rules by misleading the Court, failing to update and correct information previously provided, and not providing information and evidence exonerating the accused.

If not satisfied with Mr Khan's response, UKLFI will report its concerns to the ICC and the Bar Standards Board (BSB).

The Prosecutor filed applications at the Court on 20 May 2024 seeking warrants for the arrest of Israel's Prime Minister, Benjamin Netanyahu, and Defence Minister, Yoav Gallant. Those applications have not been published but the Prosecutor made a public statement on the day he filed them, in which he purported to summarise the grounds on which they were based.

Those grounds centred around a charge that under the leadership of Netanyahu and Gallant, Israel has used and is using starvation of the civilian population as a method of warfare, by allegedly imposing a complete siege on Gaza.

UKLFI analysed Khan's public statement and found that every phrase of every sentence of his summary of the charges was contradicted by information in the public domain, including important information that came to light after 20 May 2024.

Several dozen NGOs, individuals and States sent observations to the Court as amici curiae after the Court stated that any such observations had to be filed by 6 August 2024.

UKLFI, together with the NGOs International Legal Forum (ILF), Simon Wiesenthal Center (SWC), Bnai Brith UK (BBUK) and Jerusalemites' Initiative (JI), sent joint observations to the Court which contended that if the Prosecutor's public statement was an accurate summary of the allegations in the applications, these allegations were entirely false. The observations cited documents that fully substantiated this contention.

Several other amici curiae also argued that the applications appeared to be based on false information.

The Prosecutor filed his response to these observations on 23 August 2024. In it he submits that the Court should ignore observations of amici curiae other than those on the effect (if any) of the Oslo Accords on jurisdiction. He asks the Court to proceed urgently to issue the arrest warrants on the basis of the applications he filed on 20 May 2024. He contends that an application for an arrest warrant is an ex parte application in which he is the only party entitled to make submissions to the Court.

UKLFI's letter reminds the Prosecutor that he is required by professional rules of both the ICC and the BSB to act impartially, to seek truth objectively, not to mislead the Court, to investigate exonerating matters, and to disclose to the Court all evidence that shows or tends to show innocence.

These obligations are particularly important in an *ex parte* application. As English judges have put it: "*a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge".*

Moreover, these are continuing obligations: if material information has come to his attention after making a submission to the Court, he is obliged to bring it to the attention of the Court as soon as practicable.

In this case, the Prosecutor appears to have relied on a report of 18 March 2024, which claimed that famine was present in parts of the Gaza Strip and imminent in others. However, the Famine Review Committee (FRC) for the Integrated Food Security Phase Classification (IPC) published a review on 4 June 2024, subsequent to the Prosecutor's applications, which found that the report of 18 March was based on seriously inadequate information and was "implausible". Yet the Prosecutor has asked the Court to issue arrest warrants on the basis of his applications as filed, ignoring the subsequent findings.

In addition, full manifests of the goods transferred to the Rafah crossing between Egypt and the Gaza Strip and through other crossings between Israel and the Gaza Strip, published by the Israeli government after the applications were filed, demonstrate the falsity of the Prosecutor's allegation that Israel imposed a complete siege on Gaza that involved closing all of these crossings for extended periods.

UKLFI argues that the Prosecutor has manifestly not complied with his obligations of candour in making and pursuing the applications for arrest warrants, without drawing the Court's attention to these and other matters that were highlighted in UKLFI's observations, and which he and his staff should have found out for themselves and drawn to the Court's attention any way.

UKLFI Chief Executive, Jonathan Turner, said *"This matters to more than just Mr Netanyahu and Mr Gallant. If the prosecutor can have the court issue arrest warrants on the basis of bogus allegations, no one is safe from the risk of arrest and possibly years of imprisonment in The Hague, even if eventually acquitted."*

Report in The Telegraph (behind paywall) HERE

UKLFI's letter to Karim Khan KC HERE

Annex A to UKLFI's letter to Karim Khan KC HERE

Annex B to UKLFI's letter to Karim Khan KC HERE

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